

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

THERESA PIPER,)
)
Plaintiff,)
)
v.) Civil No.
)
UNITED STATES OF AMERICA, and)
NORTH COUNTRY HOME HEALTHCARE)
AND HOSPICE,)
)
Defendants.)

NOTICE OF REMOVAL OF CIVIL ACTION

The United States of America, on behalf of itself, Caitlyn O'Donnell, M.D., and Christopher Polich, APRN, removes the above case for the following reasons:

1. Caitlyn O'Donnell, M.D, and Christopher Polich, APRN, are defendants in a complaint now pending in Grafton County, New Hampshire, Superior Court, No. 215-2012-CV-00320, entitled Theresa Piper v. Christopher Polich, APRN, North Country Home Healthcare and Hospice Agency, and Caitlyn O'Donnell, M.D. Default based on a failure to appear has been entered against defendants O'Donnell and Polich. A case structuring conference has been scheduled for November 21, 2012 at 9:00 a.m. A copy of the complaint, Notice of Default and Notice of Case Structuring Conference are attached as Exhibit A.

2. The action commenced against Dr. O'Donnell and ARNP Polich in state court alleges acts or omissions by them purportedly entitling Plaintiff to monetary damages. This removal is brought pursuant to 42 U.S.C. § 233(c), and 28 U.S.C. § 2679(d).

3. Caitlyn O'Donnell, M.D., and ARNP Polich were, at all times relevant to the allegations contained in the complaint, employees of Ammonoosuc Community Health Services,

Inc., (ACHS). Declaration of Meredith Torres, attached to this Notice as Exhibit B (Torres Dec.), at ¶ 6. ACHS is a grantee of the U.S. Department of Health and Human Services. Pursuant to 42 U.S.C. § 233(g) and (h), the United States Department of Health and Human Services has deemed ACHS and its employees who are health care practitioners, to be employees of the federal government for purposes of coverage under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671, et seq., for acts and omissions during the period of time relevant to Plaintiff's complaint. Torres Dec. at ¶ 5.

4. The Attorney General of the United States, by the United States Attorney for the District of New Hampshire, has certified, pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d), that Caitlin O'Donnell, M.D., and Christopher Polich, APRN, were acting within the scope of their deemed employment as employees of the United States of America for purposes of the Federal Tort Claims Act, at the time of the incidents alleged in the complaint. See Certification of John P. Kacavas, United States Attorney, attached as Exhibit C, at ¶ 3.

5. Both 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2) provide that, upon certification by the Attorney General, any civil action or proceedings commenced in state court shall be removed without bond at any time before trial to the district court of the United States of the district and division embracing the place in which the action or proceeding is pending, and that the action or proceeding shall be deemed to be an action or proceeding against the United States under the provisions of the FTCA.

6. The above-captioned action is one which may be removed without bond to this Court pursuant to 28 U.S.C. § 2679(d) and 42 U.S.C. 233(a) to the extent Plaintiff seeks judgment for damages allegedly resulting from actions performed by Caitlin O'Donnell, M.D.,

and Christopher Polich, APRN, employees of ACHS, while acting within the scope of their deemed employment with the United States of America. Under the FTCA, 28 U.S.C. § 2679(b), this action is against the United States of America.

Therefore, this action now pending in Grafton County Superior Court is properly removed from that court to this Court, pursuant to 42 U.S.C. § 233(d) and 28 U.S.C. § 2679(d).

/s/ T. David Plourde

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October 5, 2012